



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 23, 2023

IN THE MATTER OF:

Appeal Board No. 628900 A

PRESENT: MARILYN P. O'MARA, MEMBER

The claimant applied to the Appeal Board pursuant to Labor Law § 534 for a reopening and reconsideration of Appeal Board No. 624177, filed October 11, 2022, which affirmed the decision of the Administrative Law Judge and sustained the initial determination disqualifying the claimant from receiving benefits, effective November 18, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and did not rule on the alternate initial determination disqualifying the claimant from receiving benefits, effective November 18, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 18, 2021 cannot be used toward the establishment of a claim for benefits was academic.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decision.

Our review of the record reveals that the case should be remanded to hold a hearing. In his reopening request, the claimant submitted medical documentation providing that the Covid19 medication posed a threat to his health. Further testimony should be taken about the documents and they should be entered into the record after an opportunity for objections.

In addition, prior to the June 8, 2022 hearing, the employer had requested an adjournment. The employer should have a further opportunity to appear and provide testimony and evidence concerning the circumstances under which the

claimant's employment ended. In addition, the employer should be questioned regarding whether there was any discussion with the claimant about being vaccinated at the time of hire, whether it was aware of the claimant's medical condition, whether the claimant and his coworkers were working remotely since October 2021, whether the claimant requested an accommodation, and any response to the claimant's request including any reason for any denial. Further, the parties should be questioned regarding whether any other employees made requests for accommodation, whether any requests were granted, and if so, the reasons for granting the requests.

The claimant's five-page hearing request that he referenced during the hearing and the exhibits that are mentioned in his request should be accepted into the record after an opportunity for objections. In addition, the documents contained in his June 22, 2022 fax should be accepted into the record after an opportunity for objections.

The Judge should take any additional testimony and evidence needed to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board and the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER